

Remarks:

Amendments to the claims:

Claims 1-39 are pending in this application, with claim 39 withdrawn from consideration

By this Amendment, claims 1, 2, 5, 26 and 37 are amended. Claims 5 and 26 are amended to correct typographical and grammatical errors and antecedent basis.

No new matter is added to the application by this Amendment. Support for the new features added to claims 1 and 37 can be found in Figs. 3(a)-3(c), 4(a)-4(c), 7(a)-7(e), 9(a) and 9(b), as originally filed. Figs. 10(a) and 10(b), as originally filed, provide support for the new features added to claim 2.

Regarding the rejection of claims 1, 3-13 and 32-38 under 35 USC 102(b) as allegedly being anticipated by US Patent No. 6,058,946 to Bellati et al. (hereinafter "Bellati"):
Applicants traverse the Examiner's rejection of the foregoing claims as allegedly being anticipated by Bellati.

Prior to discussing the relative merits of the Examiner's rejection, the applicant points out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee").

Anticipation requires that a *single reference* [emphasis added] describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The principle of "inherency," in the law of anticipation, requires that any information missing from the reference would nonetheless be known to be present in the subject matter of the reference, when viewed by persons experienced in the field of the invention.

However, "anticipation by inherent disclosure is appropriate only when the reference discloses prior art that must necessarily include the unstated limitation, [or the reference] cannot inherently anticipate the claims." *Transclean Corp. v. Bridgewood Servs., Inc.*,

290 F.3d 1364, 1373 [62 USPQ2d 1865] (Fed. Cir. 2002); *Hitzeman v. Rutter*, 243 F.3d 1345, 1355 [58 USPQ2d 1161] (Fed. Cir. 2001) ("consistent with the law of anticipation, an inherent property must necessarily be present in the invention described by the count, and it must be so recognized by persons of ordinary skill in the art"); *In re Robertson*, 169 F.3d 743, 745 [49 USPQ2d 1949] (Fed. Cir. 1999) (that a feature in the prior art reference "could" operate as claimed does not establish inherency).

Thus when a claim limitation is not explicitly set forth in a reference, evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 [63 USPQ2d 1597] (Fed. Cir. 2002). See also, *W.L. Gore v. Garlock, Inc.*, 721 F.2d at 1554 (Fed. Cir. 1983) (anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references"); *In re Oelrich*, 666 F.2d 578, 581 [212 USPQ 323] (CCPA 1982) (to anticipate, the asserted inherent function must be present in the prior art).

The Patent Office alleges that Bellati discloses each and every feature recited in the foregoing claims. Applicants respectfully disagree with the allegations by the Patent Office.

Amended independent claims 1 and 37 require the closing means (claim 1) or the opening means (claim 37) to be located within the body enclosing the detergent or detergent additive.

In contrast, Bellati discloses a bimetallic strip mounted between ribs at the rear of the lower housing part and located outside the interior chamber which contains the washing material (see Figs. 1-3 and 4(a)-4(d) of Bellati). Bellati also discloses a bimetallic strip mounted on a clamping element and located outside the interior chamber which contains the washing material (see Figs. 6-9 of Bellati). Further, Bellati discloses a bimetallic strip anchored at its lower end in the channel element at the foot of the tongue element and located outside the interior chamber which contains the washing material (see Figs. 9-11 of Bellati). Moreover, Bellati discloses a memory spring anchored to securing lugs of channel sections for the housing parts and located outside the interior chamber which contains the washing material (see Fig. 13 of Bellati).

Thus, Bellati fails to disclose a closing means (claim 1) or an opening means (claim 37) located within the body enclosing the detergent or detergent additive as required by amended claims 1 and 37, respectively.

Because the features of independent claims 1 and 37 are neither taught nor suggested by Bellati, Bellati cannot anticipate, and would not have rendered obvious, the features specifically defined in claims 1 and 37 and their dependent claims.

For at least these reasons, claims 1, 3-13 and 32-38 are patentably distinct from and/or non-obvious in view of Bellati. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

Regarding the rejection of claim 2 under 35 USC 102(b) as allegedly being anticipated by US Patent Publication No. 2002/0100773 to Rodd et al. (hereinafter "Rodd"):
Applicants traverse the Examiner's rejection of the foregoing claim as allegedly being anticipated by Rodd.

The Patent Office alleges that Bellati discloses each and every feature recited in claim 2. Applicants respectfully disagree with the allegations by the Patent Office.

Amended independent claim 2 requires a closing means comprises a thermal activator located at the second end of the body and exterior with respect to the body enclosing the detergent or detergent additive, wherein the body is interposed between the thermal activator and the outlet aperture.

In contrast, Rodd discloses an apparatus having a rigid bottom chamber containing wax which expands to push a ram upwards via a flexible diaphragm that closes the one-way valve (see Figs. 7 and 8 of Rodd) and discharge passage. However, the rigid bottom chamber is located underneath the dispensing chamber which is underneath the supply chamber filled with active composition. As shown in Figs. 7 and 8 of Rodd, the rigid bottom chamber of Rodd is not located at an end of the supply chamber opposite to the discharge passage. Moreover, Rodd's supply chamber is not located between the rigid bottom chamber and the discharge passage.

Thus, Rodd fails to disclose a closing means comprising a thermal activator located at the second end of the body and exterior with respect to the body enclosing the detergent or detergent additive, wherein the body is interposed between the thermal activator and the outlet aperture as required by claim 2.

Because the features of independent claim 2 are neither taught nor suggested by Rodd, Rodd cannot anticipate, and would not have rendered obvious, the features specifically defined in claim 2.

For at least these reasons, claim 2 is patentably distinct from and/or non-obvious in view of Rodd. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

Regarding the rejection of claims 1, 20-31 under 35 USC 103(a) as allegedly being unpatentable over Rodd in view of Bellati:

The Applicants respectfully traverse the rejection of the foregoing claims in view of Rodd and Bellati.

Prior to discussing the merits of the Examiner's position, the undersigned reminds the Examiner that the determination of obviousness under § 103(a) requires consideration of the factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1 [148 USPQ 459] (1966): (1) the scope and content of the prior art; (2) the differences between the claims and the prior art; (3) the level of ordinary skill in the pertinent art; and (4) secondary considerations, if any, of nonobviousness. *McNeil-PPC, Inc. v. L. Perrigo Co.*, 337 F.3d 1362, 1368, 67 USPQ2d 1649, 1653 (Fed. Cir. 2003). There must be some suggestion, teaching, or motivation arising from what the prior art would have taught a person of ordinary skill in the field of the invention to make the proposed changes to the reference. *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). But see also *KSR International Co. v. Teleflex Inc.*, 82 USPQ2D 1385 (U.S. 2007).

A methodology for the analysis of obviousness was set out in *In re Kotzab*, 217 F.3d 1365, 1369-70, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher."

It must also be shown that one having ordinary skill in the art would reasonably have expected any proposed changes to a prior art reference would have been successful. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207, 18 USPQ2d 1016,

1022 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894, 903-04, 7 USPQ2d 1673, 1681 (Fed. Cir. 1988); *In re Clinton*, 527 F.2d 1226, 1228, 188 USPQ 365, 367 (CCPA 1976).

"Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure." *In re Dow Chem. Co.*, 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988).

The Patent Office acknowledges that Rodd fails to teach an opening for the inlet of wash liquor. The Patent Office introduces Bellati as allegedly remedying the deficiencies of Rodd by allegedly teaching inlet apertures for receiving wash water. Moreover, the Patent Office alleges that it would have been obvious at the time of the invention to modify Rodd and include an inlet, as this requires only routine skill and is obviated by the teachings of Bellati. Applicants respectfully disagree with the allegations of the Patent Office.

As shown in Figs. 7 and 8 of Rodd, the rigid bottom chamber containing the wax is located underneath the dispensing chamber which is in turn located underneath the supply chamber. The rigid bottom chamber of Rodd is not located within the dispensing chamber or within the supply chamber. Moreover, Bellati teaches a bimetallic strip (see Figs. 1-3, 4(a)-4(d), 6-11 of Bellati) and a memory spring (see Fig. 13 of Bellati) located outside the interior chamber which contains the washing material. Thus, even if a skilled artisan were to modify Rodd with Bellati, as alleged by the Patent Office, the resulting combination would not achieve the present invention because the resulting combination, at best, would have a dispensing chamber, bimetallic strip or memory spring located outside the chamber containing the washing material.

Therefore, neither Rodd nor Bellati, taken singly or in combination, teaches or suggests a closing means located within the body enclosing the detergent or detergent additive as required by claim 1.

Because the features of independent claim 1 are not taught or suggested by Rodd and Bellati, taken singly or in combination, these references would not have rendered the features of claim 1 and its dependent claims obvious to one of ordinary skill in the art

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 14 and 15 under 35 USC 103(a) as allegedly being unpatentable over Bellati in view of US 2,698,022 to Fahnoe:

The Applicants respectfully traverse the rejection of the foregoing claims in view of Bellati and Fahnoe.

The Patent Office acknowledges that Bellati fails to teach a rod and flange. The Patent Office introduces Fahnoe as allegedly remedying the deficiencies of Bellati by allegedly teaching an arm and pivot which have a terminal end that bonds to the snap elements like a flange. Moreover, the Patent Office alleges that (a) mounting means for a bimetal element were known at the time of invention as functionally equivalent mounting devices for bimetals in dispensing devices, and (b) it would have been obvious to one of ordinary skill in the art at the time of the invention to use a plate and rod, as taught by Fahnoe, in order to fasten a bimetal element. Applicants respectfully disagree with the allegations of the Patent Office.

Fahnoe fails to remedy the deficiencies of Bellati as set forth above with respect to claim 1, from which claims 14 and 15 indirectly depend because Fahnoe does not teach or suggest a closing means located within the body enclosing the detergent or detergent additive. At best, Fahnoe teaches a closure which is a thermal responsive bimetallic element located at the lower end and outside of the vertical cylindrical receptacle (see Figs. 1 and 3 of Fahnoe). Moreover, Fahnoe teaches a bimetallic strip that is adapted to close a lower opening of the receptacle and is located outside the receptacle.

Accordingly, Bellati and Fahnoe, taken singly or in combination, fail to teach or suggest a closing means located within the body enclosing the detergent or detergent additive as required by claim 1.

Because these features of independent claim 1 are not taught or suggested by Bellati and Fahnoe, taken singly or in combination, these references would not have rendered the features of claims 14 and 15 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Regarding the rejection of claims 16-19 under 35 USC 103(a) as allegedly being unpatentable over Bellati in view of U.S. Patent No. 4,142,676 to Hattori:

The Applicants respectfully traverse the rejection of the foregoing claims in view of Bellati and Hattori.

The Patent Office acknowledges that Bellati fails to teach use of two bimetal elements. The Patent Office introduces Hattori as allegedly remedying the deficiencies of Bellati by allegedly teaching a bimetal valve with first and second bimetal discs that interact. Moreover, the Patent Office alleges that (a) such an arrangement was known at the time of invention, which allows response to multiple temperatures, and (b) it would have been obvious to one of ordinary skill in the art at the time of the invention to use two bimetal elements, as taught by Hattori, for response to multiple temperature levels. Applicants respectfully disagree with the allegations of the Patent Office.

Hattori fails to remedy the deficiencies of Bellati as set forth above with respect to claim 1, from which claims 16-19 directly or indirectly depend. Thus, Bellati and Hattori,

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taken singly or in combination, fail to teach or suggest a closing means located within the body enclosing a detergent or detergent additive as required by claim 1.

Because these features of independent claim 1 are not taught or suggested by Bellati and Hattori, taken singly or in combination, these references would not have rendered the features of claims 16-19 obvious to one of ordinary skill in the art.

In view of the foregoing, reconsideration and withdrawal of this rejection are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

The early issuance of a *Notice of Allowability* is solicited.

PETITION FOR A ONE-MONTH EXTENSION OF TIME

Applicants respectfully petition for a one-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

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CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

Andrew N. Parfomak

Andrew N. Parfomak, Esq.

Reg. No. 32,431

Norris, McLaughlin & Marcus P.A.
875 Third Avenue
New York, NY 10017

Tel: 212 808-0700

23 December 2009

Date:

Enclosures – Request for Continued Examination

CERTIFICATION OF TELEFAX TRANSMISSION:

I hereby certify that this paper and any indicated enclosures thereto is being telefax transmitted to the US Patent and Trademark Office to telefax number: 571-273-8300 on the date shown below:

Allyson Ross
Allyson Ross

23 December 2009

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